BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO. ORDER/VG/VV/2022-23/18823)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of Safal Capital (India) Limited
SEBI Registration Number: INZ000155333

BACKGROUND:

1. The Securities and Exchange Board of India (hereinafter referred to as the SEBI) had conducted an inspection of the documents and other records of the stock broker, Safal Capital (India) Limited (hereinafter referred to as the Noticee) from January 19, 2020 to January 24, 2020 to verify the compliance of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act), Securities Contracts (Regulation) Act, 1956 (hereinafter, referred to as the SCRA) and the circulars issued thereunder. The period of inspection was April 2018 to December 2019.

APPOINTMENT OF THE ADJUDICATING OFFICER

2. Based on the findings of the aforementioned inspection, the undersigned was appointed as the Adjudicating Officer by the competent authority, vide order dated August 5, 2021 under Section 23-I of the SCRA and Section 15-I of the SEBI Act read with rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter

referred to as the Adjudication Rules) and rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the SCRA Adjudication Rules) to inquire into and adjudge under Section 15HB of the SEBI Act and Section 23D of the SCRA for the alleged violations committed by the Noticee (SEBI Registration number: INZ000155333). The appointment of the undersigned as the Adjudicating Officer was communicated vide communique dated August 10, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Notice (hereinafter referred to as the SCN) dated November 18, 2021 was issued to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon it under Section 15HB of the SEBI Act and Section 23D of the SCRA for the alleged violations as stated therein. The SCN was duly delivered to the Noticee on November 26, 2021. The Noticee vide e-mail dated December 9, 2021 sought six weeks' time to file the reply in the matter. Accordingly, in the interest of justice, the Noticee was granted time till January 10, 2022 to file the reply. Subsequently, the Noticee vide e-mail dated January 10, 2022 sought another extension of two weeks' time to file the reply to the SCN. Accordingly, vide e-mail dated January 11, 2022, another extension of two weeks was granted to the Noticee. Thereafter, the Noticee vide e-mail dated February 14, 2022 filed the reply (hereinafter referred to as the reply) in the matter.

4. The Noticee was granted an opportunity of personal hearing on March 15, 2022, vide notice of hearing dated February 21, 2022. In view of the difficulties posed due to the Covid-19 pandemic, the hearing was scheduled virtually on the webex platform. The Authorized Representative of the Noticee (hereinafter referred to as the AR), Ms. Rinku Valanju, Advocate, RV Legal attended the virtual hearing and made submissions on the lines of the aforesaid reply. During the said hearing, the learned AR sought additional time to submit the details pertaining to the orders passed by the National Stock Exchange of India Limited (hereinafter referred to as NSE) against other stock brokers with respect to Short-Term Loan (hereinafter referred to as STL) facility taken by them to avail margin. Subsequently, the Noticee

vide e-mail dated April 4, 2022, stated that, certain other stock brokers have also been let off with warning in the matters pertaining to the availing of the STL. The Noticee further stated that such order copies could not be produced as the same are not part of the public documents.

CONSIDERATION OF ISSUES AND FINDINGS

5. I have perused the allegations made against the Noticee in the SCN, the reply of the Noticee dated February 14, 2022, other relevant material available on record and the submissions made by the learned AR on behalf the Noticee and the same are dealt with in the subsequent paragraphs.

6. The issues that arise for consideration in the present case are:

I. Whether the Noticee has violated the following provisions;

i. Clause 1 and clause 2 of the Annexure to the circular (SMD/SED/CIR/93/23321) of SEBI dated November 18, 1993;

ii. Clause 3 and clause 8.1 of the Annexure to the circular (SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95) of SEBI dated September 26, 2016;

iii. Clause 12 of the Annexure to the circular (SEBI/MIRSD/SE/Cir-19/2009) of SEBI dated December 3, 2009;

iv. Clause 2.6 of the Annexure to the circular (SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95) of SEBI dated September 26, 2016 read with clause 2(d) of the circular (CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64) of SEBI dated June 22, 2017;

v. Circular (CIR/MIRSD/120/2016) of SEBI dated November 10, 2016 read with the circular (CIR/MIRSD/66/2016) of SEBI dated July 21, 2016;

vi. Section 23D of SCRA.

II. The violations, if any, attract monetary penalty under Section 15HB of the SEBI Act and Section 23D of the SCRA?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA?

Mis-Use of Clients' Funds:

7. The averments in the SCN with respect to the mis-use of clients' funds in brief are as under;

(i) During the period March 2019 and September 2019, the Noticee had allegedly misused clients' funds (value of 'G' was negative) in 35 out of 38 trading days. The misuse of funds ranged from ₹18.5 lakhs to ₹5.28 crores. Further value of 'I' was found to be positive in 17 trading days out of the total 18 trading days, which indicated that the funds of the clients were utilized for own (proprietary) margin obligations of the Noticee in those 17 trading days. The misuse ranged from ₹19,742 to ₹29.3 lakhs. The value of J was also found to be negative in all the 36 trading days. The specific details of the aforesaid allegations have been given in the SCN.

(ii) The interest on STL was paid from the client's bank account (i.e. 00360340004637 client Pay-out a/c) from May 1, 2018 to December 1, 2019, as per the following details: -

Total Short-Term Loan	Interest on Short Term Loan (from client a/c)
₹ 8,25,00,000.00	₹ 39,54,265.89

(iii) The Noticee had not maintained proper segregation of funds between clients account (i.e. 0360340004637) and own account. The Noticee had uploaded the HDFC client dividend account (i.e. 00360340004627) as own account in enhance supervision submission to exchange.

8. With regard to the allegation of mis-use of clients' funds, the Noticee has placed reliance on the SEBI Circular dated September 26, 2016 and submitted that in order to arrive at the value of G, the value of A, B, C and D is required to be calculated, as given below:

A- Aggregate of fund balances available in all client bank accounts, including the settlement account, maintained by the stock broker across the stock exchanges.

B- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of cash and cash equivalents [fixed deposit (hereinafter referred to as FD), bank guarantee (hereinafter referred BG)], etc. across the stock exchanges. Only funded portion of the BG, i.e., the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

C- Aggregate value of credit balances of all clients as obtained from the trial balance across the stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations).

D- Aggregate value of the debit balances of all clients as obtained from trial balance across the stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations.

i. The Noticee has submitted that while substituting the value of ‘B’ (to calculate the value of G), an amount of ₹4 crores (50% of the FD of ₹8 crores) was excluded, since the said FD was treated as a BG. In terms of the reply, the Noticee had availed a STL from HDFC Bank, wherein, the full amount of the FD was provided upfront to the clearing member, unlike a BG and therefore, the full amount of ₹8 crores was at the disposal of the clearing member in case of default, unlike a BG which needs to be invoked.

ii. The Noticee has submitted that as per the circular dated September 26, 2016, only in the case of BG, the non-funded portion needs to be excluded and therefore, the entire amount of ₹8 crores should have been taken into account while calculating the value of ‘B’. The Noticee has re-calculated the value after taking into consideration the full value of the FD and has submitted that post such calculation, the value of ‘G’ would be negative only on 9 days out of 38 days.

iii. The Noticee has submitted that it had received telephonic intimation from NSE in December 2020 to take only the funded portion of the STL FD for the purpose of computation of collateral and accordingly, it had redeemed the entire STL on December 17, 2020. Further, the Noticee has also placed reliance on the order dated September 6, 2021 passed by the Member and Core Settlement Guarantee Fund Committee of NSE, whereby the Noticee was warned to refrain from considering the FD funded by way of STL to arrive at the availability of the clients’ funds. It was further submitted by the Noticee that there was no mala-fide intention on its part to mis-use the funds of the clients’ and requested to take a lenient view in the matter.

iv. With regard to the allegation that the interest on STL was paid from the clients’ bank account (i.e. 00360340004637 client Pay-out a/c) from May 1, 2018 to December 1, 2019, the Noticee has submitted that when it was pointed out during the inspection that it could not be done, it had rectified the same by depositing the amount deducted (₹ 39,54,265.89) as interest from the client account.

v. With regard to the allegation that the Noticee had not maintained proper segregation of funds between clients’ account (i.e. A/C- 0360340004637) and own account, the Noticee has submitted that it was legally entitled to transfer funds from the clients’ account to its own account in respect of certain legitimate charges such as brokerage, demat charges, etc. It was also submitted that in the event, the Noticee buying securities in its proprietary capacity, it would send the money in the client account (i.e. A/C - 0360340004637) and from there, the funds would be forwarded to the exchange for settlement and from there it would get adjusted towards the pay-in obligations. The Noticee has submitted that the exchange only allows for collective pay-in and does not distinguish between clients’ funds/ securities and Noticee’s funds/ securities. For the securities sold, the exchange would send the money for the same in the client's account (i.e. A/c - 0360340004637) and from there, the Noticee could withdraw the funds towards the securities which were sold in its proprietary capacity.

vi. With regard to the allegation that the Noticee had uploaded HDFC client dividend account (i.e. A/C - 0360340004637) as own account in enhance supervision submission to the exchange, the Noticee has submitted that the said violation has now been rectified and that the only activities carried out in the said account was the credit of dividend amount and allocation of the said dividend to the respective constituents.

9. In respect of the submissions of the Noticee about the mis-use of clients' funds, I note that the calculation regarding the misuse of client's funds was done on the basis of the data obtained from the Noticee for 38 sample dates. Based on the calculations, the inspection conducted by SEBI observed that on 35 out of 38 dates, the Noticee had allegedly misused clients' funds as the total available funds i.e. cash and cash equivalents with the Noticee and the clearing corporation/ clearing broker was lesser than the clients' funds and that the alleged misuse of funds ranged from ₹18.5 lakhs to ₹5.28 crores. The instances of such violations have been provided in the SCN. The Noticee has not disputed such instances. The submission of the Noticee is that the full value of FD should have been taken while arriving at the value "G".

10. I note that for a trading member, the total available funds i.e. cash and cash equivalents with the clearing corporation/ clearing broker should always be equal to or greater than the clients' funds, so that the money given by the clients would be available with the member at all times. This is one of the requirements specified under the SEBI circular dated September 26, 2016. Any deviation from the aforesaid principle indicates the misuse of the clients' funds.

11. The Noticee has submitted that SEBI had considered only 50% of the FD (i.e. funded portion of the FD) for calculating the aggregate value of the collateral deposited with the clearing corporations and/or clearing houses in the form of cash and cash equivalents, while it should have considered 100% of the FD (both funded and non-

funded portions). The reason for this, according to the Noticee is that, in the case of a FD, the full amount is provided upfront to the clearing member unlike a BG where no transfer of actual funds takes place. I have also analysed and considered the contention of the Noticee that the alleged violation is a result of an interpretational issue of the SEBI circular dated September 26, 2016. Before considering the merits of the submissions, the relevant extract of the said circular is given below:

> *"3.2 **B** - Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). **Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.**" **(bold supplied)***

12. Thus, the circular dated September 26, 2016 explicitly indicates that the funded portion of the BG shall only be considered while calculating the value of "B", i.e., only the amount deposited by the Noticee with the bank to obtain the BG shall be considered. The contention of the Noticee is that it had availed a STL facility from HDFC Bank and that in such facility, the full amount of FD was provided upfront to the clearing member unlike a BG where no transfer of actual funds takes place and that, in the event of a default, the clearing member has the full amount of ₹8 crores at its disposal. The Noticee has also submitted that the Member and Core Settlement Guarantee Fund Committee of NSE vide order dated September 6, 2021, while dealing with the circular of SEBI dated September 26, 2016 had not taken any penal action against it and had only warned it from considering the FD funded by way of STL to arrive at the availability of clients' funds.

13. I do not find any merit in the aforesaid submissions of the Noticee. In the present case, it is an un-disputed fact that the portion of the FD was funded through STL availed through a bank. In such a background, the principle adopted while calculating the value B in the case of BG (i.e. only the funded portion) shall reasonable be applicable in the case of FD also. The portion of the FD, which is funded by the bank in the form of a STL, is technically a borrowed fund and cannot be considered towards the availability of clients' funds with the Noticee. Therefore, I am unable to accept the

contention of the Noticee that the full value of the FD shall be calculated while arriving the value "B".

14. Even if, the contention and calculation as proposed by the Noticee in its reply are accepted without admitting, the value of 'G' still remains negative at least on nine days, as admitted by the Noticee. The relevant part of the reply is re-produced below;

> *"1.7 Thus, the value of "B" shall include the entire amount of Rs. 8 crores which was available with the clearing member in the form of an FDR and after the same, the value of "G" would only be negative on 9 days out of 38 trading days."*

15. Reference is drawn to the SEBI circular dated September 26, 2016 which, *inter alia*, mandates that the total funds available with the stock broker and with the clearing corporation/ clearing member should always be greater than or equal to clients' funds. Clause 3 of the Annexure to the said circular expressly provide the method of calculation of various factors. Further, clause 1 of the SEBI circular dated November 18, 1993 *inter alia* states *"It shall be compulsory for all member brokers to keep the money of the clients in a spate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as principal will be allowed to be made from the clients' account*". The SCN has given the details of the instances wherein the value of "G" was found to be negative thereby indicating that the funds of the credit balance clients were utilised for the settlement obligations of the debit balance clients or for own obligations. Further, I also note that the Member and Core Settlement Guarantee Fund Committee of NSE in its order dated September 6, 2021 (relied upon by the Noticee) made the following findings:

> *c(i). …………….Therefore, the non- funded portion of the bank guarantee is technically a borrowed fund and cannot be considered towards the availability of clients' fund with Safal. The Committee finds that the spirit of the said provisions of the circular is to not consider any funds that are not owned by the Trading Member or does not belong to the clients<u>. Like-wise, the portion of the fixed deposit funded by the bank in the form of short-term loan is technically a borrowed fund and cannot be considered towards the availability of clients' funds with Safal. Therefore, after excluding the short-term loan from the funds available with Safal, there was a shortfall of clients' funds with Safal on the five sample dates…</u>"* (underline supplied)

16. From the above, I note that the Noticee was not exonerated by the said Committee. In terms of Section 23D of SCRA, if a stock broker fails to segregate

securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or any other client, he shall be liable to a penalty as stated therein. In view of the above, I do not have any hesitation in holding that the Noticee has violated the circulars of SEBI dated November 18, 1993 read with the circular dated September 26, 2016 and Section 23D of SCRA.

17. I note that the Noticee has not denied the allegation that the interest on STL was paid from the clients' bank account (i.e. 00360340004637 client Pay-out a/c) from May 1, 2018 to December 1, 2019. The Noticee has further stated that when it was pointed out during the inspection, it had rectified the same by depositing the amount deducted (₹39,54,265.89) as interest from the client account. The SEBI Circular dated November 18, 1993, *inter alia*, mandates that all the member brokers shall keep the money of the clients in a separate account and their own money in a separate account. In the present case, since the interest on the STL was paid from the clients' bank account, I find that the Noticee had not maintained proper segregation of funds between client account and own account and the acts of the Noticee are in violation of clause 1 of the circular dated November 18, 1993.

18. With regard to the allegation that the Noticee had not maintained proper segregation of funds between clients account (i.e. A/C- 0360340004637) and own account, the Noticee has submitted that it was legally entitled to transfer funds from the client account to its own account in respect of certain legitimate charges such as brokerage, demat charges etc. In this regard, I find that the Noticee has not produced any documentary evidence in support of the claim that amounts transferred from the client account to the Noticee's account were in furtherance of legitimate charges. Accordingly, I am unable to accept the contention of the Noticee. With regard to the allegation that the Noticee had uploaded HDFC client dividend account (i.e. A/C - 0360340004637) as own account in enhance supervision submission to the exchange, the Noticee has submitted that the said violation has now been rectified.

19. In view of the above, I find that the Noticee had not maintained proper segregation of funds between clients' account and own account, misused clients' funds, the interest on STL was paid from the clients' bank account. The above acts of

the Noticee are in violation of clause 1 of the annexure to the SEBI circular dated November 18, 1993 read with the clause 3 of the Annexure to the SEBI circular dated September 26, 2016 and under Section 23D of the SCRA.

Financial Statement Analysis:

20. With respect to the financial statement analysis, I note that the said analysis as on March 31, 2019 and December 31, 2019 was carried out to check the availability of funds with the Noticee and to check its financial stability. The details of the same, are given below for the sake of reference:

Sr. No.	Particulars	Amount (₹ in crores) as on 31.03.2019	Amount (₹ in crores) as on 31.03.2019
	Payable to clients	12.74	11.86
	Other payables	1.27	1.10
A)	**Total Payables**	**14.01**	**12.97**
	Client bank balance	2.23	2.24
	Funds available with Exchanges	3.25	2.45
	Funds available with Clearing member	13.12	10.09
	Funds available with clearing corporation	0.41	0.66
B)	**Total Client funds available (B)**	**19.01**	**15.44**
C)	**Excess/ (Shortage) of funds**	**4.99**	**2.48**

21. It was alleged in the SCN that, even though the above table indicates that the Noticee was having sufficient fund to meet the client payable as on March 31, 2019 and December 31, 2019, it was observed that out of the funds available with clearing member, FDs amounting to ₹5.25 crores as on both dates were funded by HDFC Bank towards STL and therefore did not primarily form part of the clients' funds/own funds and accordingly, alleged that there was a shortfall of ₹0.25 crores as on March 31, 2019 and ₹2.76 crores as on December 31, 2019.

22. As regards the aforesaid allegation, the Noticee has submitted that the alleged shortfall has occurred primarily due to the exclusion of the FDs amounting to ₹5.25 crores which was funded by HDFC Bank towards the STL availed by it. The Noticee has submitted that to the best of its knowledge, no circular was issued by SEBI/

Exchange stating clearly that the funded portion of FD only should be counted and that there was no mala-fide intention on its part. I find that since the FD amounting to ₹5.25 crores was funded by HDFC Bank and therefore, the said amount cannot be treated as part of clients' funds/own funds. Further, the Noticee has also submitted that as soon as it received the clarification about the nature of the FDs backed by STL, it had promptly closed all the STLs and that there was no malafide intention on its part. The Noticee has further stated that as per the financial statement analysis, 'other payables' of ₹1.27 crore and ₹1.10 crore have been considered by the inspection team to calculate the excess/ shortage funds. The Noticee has submitted that 'other payables' are not related to client credit balance and therefore, such 'other payables' should be excluded to arrive at total payables. However, I am of the considerate view that the other payables cannot be excluded from the total payable, as the obligation is generated from the stock broking business. Accordingly, I find that the Noticee has committed the violation of the SEBI circular dated November 18, 1993 and Section 23D of SCRA.

Non Segregation of Clients' Securities:

23. As regards the allegation of non-segregation of clients' Securities, it was alleged in the SCN that for October 18, 2019, the Noticee had a total pay in obligation of 78,432 shares. However, there was a shortage of 15,954 shares with different Unique Client Codes. Similarly, for November 18, 2019, the Noticee had a pay in obligation of 50,880 shares and there was a shortage of 2,851 shares. However, the pay in of the said Unique Client Codes was done by the Noticee using other client's securities. It indicated that the Noticee had used the securities of other clients to meet such pay in obligations.

24. With respect to the said allegation, the Noticee has placed reliance on the SEBI circular dated June 20, 2019 (CIR/HO/MIRSD/DOP/CIR/P/2019/75) to submit that in principle, there was never any shortfall of securities for the purposes of pay-in as the securities were lying either in the Client Unpaid Securities Account (hereinafter referred to as the CUSA) or the Non-Power of Attorney Account (hereinafter referred to as the "Non-POA Account") of the clients. The Noticee has further provided the copy of its pool account statement reflecting the credit of securities from the CUSA or Non-

POA Account mapped with client's unique client code. Upon reconciliation, on the basis of the reply of the Noticee, I note that the shortage for October 18, 2019 and November 18, 2019 was 6,691 shares and 8 shares, respectively.

25. I note that the clause 2 of the annexure to the circular dated November 18, 1993 mandate the segregation of clients' securities. The relevant part of the aforesaid circular is given below:

> *"It shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following:-*
>
> *a. Securities received for sale or kept pending delivery in the market;*
> *b. Securities fully paid for, pending delivery to clients;*
> *c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);*
> *d. Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;*
> *e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc.;*
> *f. Securities given on Vyaj-badla. Member shall obtain authorization from clients for the same."*

26. In view of the mandate stipulated in the aforesaid circular with respect to the segregation of clients' securities, I am unable to accept the submissions of the Noticee that the securities were transferred to meet the pay in obligation from CUSA account. Further, in terms of the circular dated June 20, 2019, the securities kept in the 'client unpaid securities account' shall either be transferred to the demat account of the respective client upon fulfilment of client's funds obligation or shall be disposed off in the market by the trading member/clearing member within five trading days after the pay-out. The unpaid securities shall be sold from the unique client code of the respective client. Profit/loss on the sale transaction of the unpaid securities, if any, shall be transferred to /adjusted from the respective client account. In view of the same, I find that the Noticee has violated the provisions of clause 2 of the circular dated November 18, 1993 and Section 23D of SCRA.

Non settlement of clients' funds and securities

27. With respect to the non-settlement of clients' funds and securities, it was alleged in the SCN that the Noticee had not settled 11 clients out of the total sample of 791 active clients, amounting to ₹5,75,29,026.49/-. Further, the amount was retained by the Noticee in excess of the obligation of the clients. It was also observed that the Noticee had not settled for the inactive clients. The details of instances where the same credit balance of the clients has remained outstanding for at least two consecutive quarters was in the range of ₹5.35 lakhs to ₹69.99 lakhs (which means that the client was inactive and the account was not settled).

28. As regards the aforesaid allegation, the Noticee has submitted the following:

a. For four clients, the settlement could not be done on required date of April 2, 2018 on account of annual bank closing and the same was done on April 3, 2018;
b. For one client, settlement was done on July 9, 2018 while the due date of settlement was June 28, 2018;
c. For one client, the client has specifically requested to not settle the funds;
d. Three clients were using the margin and accordingly the amount retained is less than the alleged amount;
e. One client had issued 2 cheques in favor of the Noticee and the funds/ securities were retained on the actual date of settlement as the said cheques got cleared on a later date;
f. For one client, the stock transfer request was rejected due to invalid DP ID of the client.

29. The Noticee has further submitted that the allegation that the same credit balance of the inactive clients which remained outstanding for at least two consecutive quarters was in the range of ₹5.35 lakhs to ₹ 69.99 lakhs is erroneous. I note the submission of the Noticee that it had received an e-mail from SEBI on November 5, 2020 wherein it was stated that said amount was ₹6.99 lakhs and not ₹69.99 lakhs. The Noticee has further submitted that it was its policy to retain an

amount up to ₹2,000 on the basis of running account authorization for the settlement of the client and those inactive clients which had credit balance of ₹2,000 or less have not been settled.

30. As regards the allegation that the Noticee had not settled 11 clients out of 791 sample active clients, I note that the Noticee has only provided a satisfactory reply in respect of 4 clients. In respect of such four clients, the Noticee has submitted that the settlement could not be done due to the annual bank account closure. As regards the remaining seven clients, the Noticee has not provided any satisfactory justification. For one client, the Noticee has produced an authority letter from the client wherein the client has requested the Noticee to not settle the funds. I note that the SEBI circular dated December 3, 2009 mandates settlement of funds within twenty-four hours of the pay-out and empowers the client to authorize the stock broker to actually settle the funds at least once in a calendar quarter or month, as preferred by the client. The relevant parts of the said circular are given below:

Clause 12 of Annexure of SEBI Circular dated December 3, 2009-

"Running Account Authorization

"Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the pay-out. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

a. The authorization shall be renewed at least once a year and shall be dated.
b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.
c. The authorization shall contain a clause that the Client may revoke the authorization at any time.
d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.
e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.
g. Such periodic settlement of running account may not be necessary:
i. for clients availing margin trading facility as per SEBI circular
ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).
h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.
i. There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.
j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them."

Further, clause 8.1 of Annexure to the SEBI circular dated September 26, 2016 also *inter alia* deals with mode of transfer of funds, as given below:

"Running Account Settlement
8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;
8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.
8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.
8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.
8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled."

31. The aforesaid circulars do not envisage such a scenario wherein the stock broker may settle the funds of a client beyond the specified period. Therefore, I am of the view that that the Noticee has failed to settle the funds of its clients in accordance with the SEBI circular dated December 3, 2009 read with SEBI circular dated September 26, 2016 which require the Noticee to settle the funds of its clients within the specified period and therefore, the contentions of the Noticee, in this regard, is

liable to be rejected and the act of the Noticee is accordingly in violation of clause 12 of the annexure to the SEBI circular dated December 3, 2009 and clause 8.1 of the annexure to the SEBI circular dated September 26, 2016.

Client funding

32. As regards the allegation of client funding, it was observed that out of sample 50 clients, the Noticee had funded 7 clients in 13 instances beyond T+2+5 days and allowed further exposure**.** It was also observed that the Noticee had funded aggregate amount of ₹73,64,233.25/- to seven of its clients beyond T+2+5 Days. From the Delayed Payment Charges Ledger, it was observed that during the inspection period the Noticee had earned the delayed payment charges of ₹1.56 crores.

33. In respect of aforesaid allegation, it was submitted by the Noticee that the running debit balance of the concerned clients eventually got converted into credit balance. It was also submitted that all the seven clients had securities lying in their account on the debit date which was available as collateral with the Noticee and the further exposure, if any, was given on account of the said securities which were available as collateral. The Noticee has also submitted that the said seven clients were long term clients and it was a commercial call taken by it.

34. I find that the Noticee has not disputed that the said clients were provided exposure over and above the limit specified under the law. On the other hand, Noticee has merely attempted to justify the said violations as commercial call taken by it. Clause 2.6 of the annexure to the SEBI circular dated September 26, 2016, *inter alia,* requires the Noticee to not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount. Since the Noticee has provided exposure to its clients beyond the specified period, I find that the Noticee has committed the violation of clause 2.6 of the annexure to the SEBI circular dated September 26, 2016 read with clause 2(d) of the SEBI circular dated June 22, 2017. The relevant parts of the said circulars are given below:

Clause 2.6 of Annexure of SEBI Circular SEBI/HO/ MIRSD/MIRSD2/ CIR/P/2016 /95 dated September 26, 2016

"Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in."

Clause 2(d) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017

Clause 2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time." This clause would be effective from August 1, 2017."

Client registration process

35. As regards the client registration process, it was alleged in the SCN that the inspection conducted by SEBI observed that out of 2664 registered clients, the Noticee had not uploaded Central – KYC (CKYC) details of 16 clients in Central Registry of Securitization Asset Reconstruction and Security Interest Portal. The details of the clients have been specifically mentioned in the annexure enclosed to the SCN.

36. As regards the aforesaid allegation, the Noticee has stated the following:

a. that after the inspection of SEBI, the Noticee has taken immediate cognizance of the matter;

b. the Noticee asked for information from the aforesaid sixteen clients and it is noted therefrom that:

i. three clients have closed their accounts;

ii. eight clients did not provide the relevant details for the purpose of CKYC and accordingly their accounts were disabled;

iii. five clients provided the relevant details and their CKYC was uploaded.

37. I note that the Noticee has not denied the allegation raised in the SCN and has only ensured the subsequent compliance in the matter. Accordingly, I find that the

Noticee has committed the violation of the SEBI circular dated November 10, 2016 read with the circular dated July 21, 2016 and which, *inter alia*, required the Noticee to upload the KYC data of all the individuals.

38. In view of the above, I find that the Noticee has violated the provisions of law as stated at paragraph 6 above of this order. The violations, as brought out above, make the Noticee liable for monetary penalty under Section 23D of the SCRA and Section 15HB of the SEBI Act. The text of the said provisions is produced hereunder for ready reference:

> ***SCRA***
> ***Penalty for failure to segregate securities or moneys of client or clients***
> *"23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees. "*
>
> ***SEBI Act***
> ***Penalty for contravention where no separate penalty has been provided.***
> *"15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees"*

39. I note that the Hon'ble Supreme Court in the matter of Chairman, ***SEBI Vs Shriram Mutual Fund*** {[2006] 5 SCC 361} has held " *In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...."*

40. While determining the quantum of penalty under Section 23D of SCRA and Section 15HB of the SEBI Act, the relevant factors as stipulated in Section 23J of the SCRA and Section 15J of the SEBI Act needs to be considered. The said Sections are given below: -

"SCRA
Factors to be taken into account while adjudging quantum of penalty

23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have been exercised under the provisions of this section."

"SEBI Act

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under section 15-I, or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:-
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

41. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by the Noticee. At the same time, I also note from the submissions made by the Noticee that it had rectified/taken corrective steps in respect of certain violations.

ORDER

42. Having considered all the facts and circumstances of the case, the material available on record including the submissions made by the Noticee, the factors mentioned in Section 23J of the Securities (Contracts) Regulation Act, 1956 and Section 15J of the Securities and Exchange Board of India Act, 1992 and in exercise of the powers conferred upon me under Section 23-I of the Securities (Contracts) Regulation Act, 1956 and Section 15-I of the Securities and Exchange Board of India Act, 1992 read with rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and rule 5 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, I hereby impose the following penalty on Safal Capital (India) Limited (SEBI Registration Number INZ000155333):-

Sr. No.	Penalty	Provisions
1	₹ 2,00,000 (rupees two lakhs only)	Section 23D of the Securities (Contracts) Regulation Act, 1956
2	₹ 2,00,000 (rupees two lakhs only)	Section 15HB of the Securities and Exchange Board of India Act, 1992
Total	₹ 4,00,000 (rupees four lakhs only)	

I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

43. The Noticee shall remit / pay the said amount of penalty within forty five days of receipt of this order either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai or through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link “ENFORCEMENT ->Orders -> Orders of AO -> PAY NOW.”. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the “The Division Chief, Enforcement Department –Division of Regulatory Action –VI, SEBI” along with the following details:

a) Name and Permanent Account Number of the entity (Noticee)

b) Name of the case / matter

c) Purpose of Payment –Payment of penalty under Adjudication proceedings

d) Bank Name and Account Number

e) Transaction Number

44. In the event of failure to pay the said amount of penalty within forty-five days of the receipt of this order, the Securities and Exchange Board of India may initiate consequential actions including but not limited to recovery proceedings in accordance with law for the realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of the Noticee.

45. A copy of this order is sent to Safal Capital (India) Limited and also to the Securities and Exchange Board of India.

Date: AUGUST 30, 2022
Place: MUMBAI

VIJAYAKRISHNAN G.
ADJUDICATING OFFICER